

## Agricultural Marketing Service, USDA

§ 900.700

7 CFR part where identified and described	Current OMB control No.
959, South Texas Onions .....	0581-0178
966, Florida Tomatoes .....	0581-0178
979, South Texas Melons .....	0581-0178
981, California Almonds .....	0581-0071
982, Oregon-Washington Hazelnuts .....	0581-0178
984, California Walnuts .....	0581-0178
985, Spearmint Oil .....	0581-0065
987, California Dates .....	0581-0178
989, California Raisins .....	0581-0178
993, California Dried Prunes .....	0581-0178
997, Domestic Peanuts Not Covered Under the Peanut Marketing Agreement .....	0581-0163
998, Domestic Peanuts Covered Under the Peanut Marketing Agreement .....	0581-0067

[63 FR 10492, Mar. 4, 1998]

### Subpart—Assessment of Exemptions

#### § 900.700 Exemption from assessments.

(a) This section specifies criteria for identifying persons eligible to obtain an assessment exemption for marketing promotion, and procedures for applying for an exemption under 7 CFR parts 906, 915, 916, 917, 922, 923, 924, 925, 927, 929, 930, 931, 932, 947, 948, 955, 956, 958, 959, 966, 979, 981, 982, 984, 985, 987, 989, 993, and such other parts (included in 7 CFR parts 905 through 998) covering marketing orders for fruits, vegetables, and specialty crops as may be established or amended to include market promotion. For the purposes of this section, the term “assessment period” means fiscal period, fiscal year, crop year, or marketing year as defined under these parts; the term “marketing promotion” means marketing research and development projects, and marketing promotion, including paid advertising, designed to assist, improve, or promote the marketing, distribution, and consumption of the applicable commodity.

(b) Any handler who operates under an approved National Organic Program (7 CFR part 205)(NOP) process system plan, only handles or markets organic products that are eligible to be labeled 100 percent organic under the NOP, and are produced on a certified organic farm as defined in §2103 of the Organic Foods Production Act of 1990 (7 U.S.C. 6502) and the NOP regulations issued under that Act, is not a split operation, and is subject to assessments under a part or parts specified in paragraph (a)

of this section, shall be exempt from the portion of the assessment applicable to marketing promotion, including paid advertising. Any handler so exempted shall be obligated to pay the portion of the assessment for other authorized activities under such part or parts.

(c) To be exempt from paying assessments for these purposes under a part or parts, the handler shall submit an application to the committee or board established under the applicable part or parts prior to or during the assessment period. This application, FV-649, “Certified Organic Handler Application for Exemption from Market Promotion Assessments Paid Under Federal Marketing Orders,” shall include: The applicable committee or board and Federal marketing order number; the date; handler’s name; company name and address; telephone and fax numbers; an optional e-mail address; certification that the applicant is not a split operation, as defined by the Organic Foods Production Act of 1990 (OFPA) (7 U.S.C. 6502) and the NOP; certification that the applicant only handles and markets organic products eligible to be labeled 100 percent organic under the NOP, and that the applicant is subject to assessments under the Federal marketing order program for which the exemption is requested. The applicant shall list all commodities handled or marketed. The applicant shall list the number of producers for whom they handle or market. The applicant shall attach a copy of their organic handler operation certificate and all applicable producer certificates provided by a USDA-accredited certifying agent under the OFPA and the NOP. The applicant shall certify that the handler meets all of the applicable requirements for an assessment exemption as provided in this section. The handler shall file the application with the committee or board, prior to or during the applicable assessment period, and annually thereafter, as long as the handler continues to be eligible for the exemption. If the person complies with the requirements of this section and is eligible for an assessment exemption, the committee or board will approve the exemption and notify the applicant, in writing, within the applicable

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timeframe as follows: For exemption requests received on or before August 15, 2005, the committee or board will have 60 days to approve the exemption request; after August 15, 2005, the committee or board will have 30 days to approve the exemption request. If the application is disapproved, the committee or board will notify the applicant, in writing, of the reason(s) for disapproval within the same timeframes.

(d) The applicable assessment rate for any handler approved for an exemption shall be computed by dividing the committee's or board's estimated non-marketing promotion expenditures by the committee's or board's estimated total expenditures approved by the Secretary and applying that percentage to the assessment rate applicable to all persons for the assessment period. The committee's or board's estimated non-marketing promotion expenditures shall exclude the direct costs of marketing promotion and the portion of committee's or board's administrative and overhead costs (e.g., salaries, supplies, printing, equipment, rent, contractual expenses, and other applicable costs) to support and administer the marketing promotion activities. If a committee or board does not plan to conduct any market promotion activities in a fiscal year, the committee or board may submit a certification to that effect to the Secretary, and as long as no assessments for such fiscal year are used for marketing promotion projects, or the administration of projects funded by a previous fiscal period's assessments, the committee or board may assess all handlers, regardless of their organic status, the full assessment rate applicable to the assessment period. For each assessment period, the Secretary shall review the portion of the assessment rate applicable to marketing promotion for persons eligible for an exemption and, if appropriate, approve the assessment rate.

(e) When the requirements of this section for exemption no longer apply to a handler, the handler shall inform the committee or board within 30 days and pay the full assessment on all remaining assessable product for all committee or board assessments from the

date the handler no longer is eligible to the end of the assessment period.

(f) Within 30 days following the applicable assessment period, the committee or board shall re-compute the applicable assessment rate for handlers exempt under this section based on the actual expenditures incurred during the applicable assessment period. The Secretary shall review, and if appropriate, approve any change in the portion of the assessment rate for market promotion applicable to exempt handlers, and authorize adjustments for any overpayments.

(g) The exemption will apply at the beginning of the next assessable period following notification of approval of the assessment exemption, in writing, by the committee or board.

[70 FR 2770, Jan. 14, 2005]

EFFECTIVE DATE NOTE: At 80 FR 82020, Dec. 31, 2015, § 900.700 was revised, effective Feb. 29, 2016. For the convenience of the user, the revised text is set forth as follows:

### § 900.700 Exemption from assessments.

(a) This section specifies criteria for identifying persons eligible to obtain an exemption from the portion of the assessment used to fund marketing promotion activities under a marketing order and the procedures for applying for such an exemption under 7 CFR parts 905, 906, 915, 922, 923, 925, 927, 929, 930, 932, 948, 955, 956, 958, 959, 966, 981, 982, 984, 985, 987, 989, 993, and such other parts (included in 7 CFR parts 905 through 998) covering marketing orders for fruits, vegetables, and specialty crops as may be established or amended to include market promotion. For the purposes of this section, the term “assessment period” means fiscal period, fiscal year, crop year, or marketing year as defined under these parts; the term “marketing promotion” means marketing research and development projects or marketing promotion, including paid advertising designed to assist, improve, or promote the marketing, distribution, or consumption of the applicable commodity.

(b) A handler who operates under an approved National Organic Program (7 CFR part 205) (NOP) organic handling system plan and is subject to assessments under a part or parts specified in paragraph (a) of this section may be exempt from the portion of the assessment applicable to marketing promotion, including paid advertising, provided that:

(1) Only agricultural commodities certified as “organic” or “100 percent organic” (as defined in the NOP) are eligible for exemption;

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(2) The exemption shall apply to all certified "organic" or "100 percent organic" (as defined in the NOP) products of a handler regardless of whether the agricultural commodity subject to the exemption is handled by a person that also handles conventional or nonorganic agricultural products of the same agricultural commodity as that for which the exemption is claimed;

(3) The handler maintains a valid certificate of organic operation as issued under the Organic Foods Production Act of 1990 (7 U.S.C. 6501-6522)(OFPA) and the NOP regulations issued under OFPA (7 CFR part 205);

(4) Any handler so exempted shall continue to be obligated to pay assessments under such part or parts specified that are associated with any agricultural products that do not qualify for an exemption under this section; and

(5) For exempted products, any handler so exempted shall be obligated to pay the portion of the assessment associated with the other authorized activities under such part or parts other than marketing promotion, including paid advertising.

(c) *Assessment exemption application.* (1) To be exempt from paying assessments for these purposes under a part or parts listed in paragraph (a) of this section, the handler shall submit an application to the board or committee established under the applicable part or parts prior to or during the assessment period. This application, Form FV-649, "Certified Organic Handler Application for Exemption from Market Promotion Assessments Paid Under Federal Marketing Orders," shall include:

(i) The date, applicable committee or board, and Federal marketing order number;

(ii) The applicant's full name, company name, address, telephone and fax numbers, and email address;

(iii) Certification that the applicant maintains a valid certificate of organic operation under the OFPA and the NOP;

(iv) Certification that the applicant handles or markets organic products eligible to be labeled "organic" or "100 percent organic" under the NOP;

(v) Certification that the applicant is otherwise subject to assessments under the Federal marketing order program for which the exemption is requested;

(vi) The number of organic certified producers for whom they handle or market product (including the applicant);

(vii) A requirement that the applicant attach a copy of their certificate of organic operation and all applicable producer certificates of organic operation issued by a USDA-accredited certifying agent under the OFPA and the NOP;

(viii) Certification, as evidenced by signature and date, that all information provided by the applicant is true; and

(ix) Such other information as the committee or board may require, with the approval of the Secretary.

(2) The handler shall file the application with the committee or board, prior to or during the applicable assessment period, and annually thereafter, as long as the handler continues to be eligible for the exemption. If the person complies with the requirements of this section and is eligible for an assessment exemption, the committee or board will approve the exemption request and provide written notification of such to the applicant within 30 days. If the application is disapproved, the committee or board will provide written notification of the reason(s) for such disapproval within the same timeframe.

(3) The exemption will apply at the beginning of the next assessable period following notification of approval of the assessment exemption, in writing, by the committee or board.

(d) *Assessment exemption calculation.* (1) The applicable assessment rate for any handler approved for an exemption shall be computed by dividing the committee's or board's estimated non-marketing promotion expenditures by the committee's or board's estimated total expenditures approved by the Secretary and applying that percentage to the assessment rate applicable to all persons for the assessment period. The modified assessment rate shall then be applied to the quantity of certified "organic" or "100 percent organic" products handled under an approved organic assessment exemption as provided in paragraph (c)(2) of this section. Products handled not subject to an approved organic assessment exemption shall be assessed at the assessment rate applicable to all persons for the assessment period. The committee's or board's estimated non-marketing promotion expenditures shall exclude the direct costs of marketing promotion and the portion of committee's or board's administrative and overhead costs (*e.g.*, salaries, supplies, printing, equipment, rent, contractual expenses, and other applicable costs) to support and administer the marketing promotion activities.

(2) If a committee or board does not plan to conduct any market promotion activities in a fiscal year, the committee or board may submit a certification to that effect to the Secretary, and as long as no assessments for such fiscal year are used for marketing promotion projects, or the administration of projects are funded by a previous fiscal period's assessments, the committee or board may assess all handlers, regardless of their organic status, the full assessment rate applicable to the assessment period.

(3) For each assessment period, the Secretary shall review the portion of the assessment rate applicable to marketing promotion for persons eligible for an exemption

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and, if appropriate, approve the assessment rate.

(4) When the requirements of this section for exemption no longer apply to a handler, the handler shall inform the committee or board within 30 days and pay the full assessment on all remaining assessable product for all committee or board assessments from the date the handler no longer is eligible to the end of the assessment period.

(5) Within 30 days following the applicable assessment period, the committee or board shall re-compute the applicable assessment rate for handlers exempt under this section based on the actual expenditures incurred during the applicable assessment period. The Secretary shall review, and if appropriate, approve any change in the portion of the assessment rate for market promotion applicable to exempt handlers, and authorize adjustments for any overpayments or collection of underpayments.

**PART 905—ORANGES, GRAPEFRUIT, TANGERINES, AND TANGELOS GROWN IN FLORIDA**

**Subpart—Order Regulating Handling**

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- 905.3 Person.
- 905.4 Fruit.
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- 905.6 Producer.
- 905.7 Handler.
- 905.8 Prepare for market.
- 905.9 Handle or ship.
- 905.10 Carton or standard packed carton.
- 905.11 Fiscal period.
- 905.12 Committee.
- 905.13 District.
- 905.14 Redistricting.
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- 905.149 Procedure for permitting growers to ship tree run citrus fruit.
- 905.150 Eligibility requirements for public member and alternate member.
- 905.153 Procedure for determining handlers' permitted quantities of red seedless grapefruit when a portion of sizes 48 and 56 of such variety is restricted.
- 905.161 Repacking shipper.
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- 905.171 Handler supplier report.